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four years later with the degree of Bachelor of Arts. He entered the Law School in September, 1913, where he gave early promise of success in the study of the law. He was elected a member of the Sharswood Law Club and the Phi Delta Phi Legal Fraternity, and at the end of his second year, was elected by the Faculty to the Editorial Staff of the *LAW REVIEW*. Up until almost the day of his death he was an enthusiastic worker in all the phases of his student-life. So sudden was his departure that even this issue of the book he helped to edit contains an article from his pen.

In all his work, both in the class room and among his fellow-students, he had won for himself a place of marked distinction. He was gifted with an unusual quickness of perception combined with a clearness of thought that enabled him to do well everything he undertook. This, together with a faculty for persistent and tireless effort, insured him a high place in the profession. His death has deprived the Law School of an alumnus and friend to which it could well have pointed with pride; the profession has been denied numbering among its members one who would have toiled untiringly and productively in its advancement.

COMMON LAW—EFFECT OF THE ADOPTION BY AN AMERICAN STATE OF THE COMMON LAW OF ENGLAND—The courts of a number of American jurisdictions, in the absence of statutes on the subject, have held that the rules of the common law of England, in so far as they are applicable and are not in conflict with express statutory enactment, are in full force today.¹ In the majority of American States, however, special statutes have adopted the English common law, so far as it is consistent with and adapted to the necessities of the people and is not repugnant to or inconsistent with the constitution and laws of the United States or of the particular state or territory.² It may safely be asserted that the common law, as it existed in England at the time of the settlement of the American colonies, has never been in force in all of its provisions in any state of the United States. It has been adopted only to the extent that its general principles were suited to the condition and habits of the colonists, and in harmony with the spirit and objects of American institutions. In *Katz v. Walkinshaw*,³ the court stated

¹ *Morris v. Vanderen*, 1 Dall. 64 (Pa. 1782); *Commonwealth v. Lehigh Valley R. Co.*, 165 Pa. 162 (1895); *Conant v. Jordan*, 107 Me. 227 (1912); *Mathewson v. Phoenix Iron Foundry*, 20 Fed. 281 (1884).

² See *Going v. Emery*, 16 Pick. 107 (Mass. 1834); *State v. Musick*, 145 Mo. App. 33 (1910); *Ferris v. Saxton*, 4 N. J. Law, 1 (1818); *Waters v. Gerard*, 189 N. Y. 302 (1907).

³ 141 Col. 116 (1903).

the doctrine to be as follows: "Whenever it is found that, owing to the physical features and character of this state, and the peculiarities of its climate, soil, and production, the application of a given common-law rule by our courts tends constantly to cause injustice and wrong, rather than the administration of justice and right, then the fundamental principles of right and justice on which that law is founded, and which its administration is intended to promote, require that a different rule should be adopted, one which is calculated to secure persons in their property and possession, and to preserve for them the fruits of their labors and expenditures."⁴

Among the many common-law rules rejected by our courts on the theory that they were inconsistent with the conditions prevailing in the particular jurisdiction, the following may be regarded as typical: The rule as to the right of trial by wager of law;⁵ the rule as to the allowance of the benefit of clergy;⁶ the rules respecting the exclusive establishment of the Church of England, and the ecclesiastical right to titles, oblations, and other duties;⁷ the theoretical unity of husband and wife;⁸ the rules relating to the easements of ancient light and air;⁹ and the rule that a barrister or attorney cannot, by action, compel payment for his services.¹⁰

In considering any particular common-law rule, two diametrically opposed doctrines must be kept in mind. One is the general principle expressed in the maxim that where the reason of a rule ceased, the rule also ceased. On the other hand, it must be conceded that whenever a principle of the common law has been clearly and unquestionably recognized and established, the court must enforce it, until it is repealed by the legislature, even though the reason, in the opinion of the court, which induced its original establishment, may have ceased to exist. If the latter doctrine were not recognized, rules of law would be as unsettled and fluctuating as the personal opinions of the different judges administering them might happen to differ concerning the existence of sufficient reason for maintaining them.¹¹

In the recent case of *Ketelson v. Stilz et al.*,¹² the Supreme

⁴ See also *Williams v. Miles*, 68 Neb. 463 (1903); *Luhrs v. Hancock*, 181 U. S. 567 (1901).

⁵ *Childress v. Emory*, 8 Wheat. 642 (1823).

⁶ *Fuller v. State*, 1 Blackf. 63 (Ind. 1820).

⁷ *Pawlet v. Clark*, 9 Cranch 292 (1815).

⁸ *Jones v. Clifton*, 101 U. S. 225 (1879).

⁹ *Haverstick v. Sipe*, 33 Pa. 368 (1859).

¹⁰ *Stevens v. Adams*, 23 Wend. 56 (N. Y. 1840).

¹¹ *Meng v. Coffee*, 67 Neb. 500 (1903); *Powell v. Branden*, 24 Miss. 343 (1852).

¹² 111 N. E. 423 (Ind. 1916).

Court of Indiana considered the applicability of an established rule of the English common law to the conditions prevailing in Indiana. It is the well-settled law in England, since the case of *Brown v. Wooton*,¹³ that a judgment, although it is not satisfied, may be pleaded in bar in an action for the same cause brought against another as a joint tort-feasor. The great majority of American courts have held that nothing short of full satisfaction of a former judgment in tort can be a bar to an action against a joint tort-feasor who was not a party to the first judgment.¹⁴ The Indiana court refused to approve the English rule, although the legislature of that state expressly provided: "The law governing this state is declared to be . . . the common law of England, and statutes of the British Parliament made in aid thereof prior to the reign of the James the First [excepting certain enactments] which are of a general nature, not local to that kingdom." The court in reaching its conclusion said: "No rule of the common law could survive the reason on which it was founded. . . . It seems reasonable to hold that the injured party should be entitled to one compensation, and no good reason has been suggested to show why an ineffectual attempt to collect judgment rendered against one of several joint tort-feasors should operate to bar further proceedings against another who is jointly liable."

While it is unquestionable that the court may properly reject a common-law rule if it is inconsistent with the spirit of American institutions and repugnant to the modern idea of justice, it is equally well settled that the power to declare a rule of the common law inapplicable should be used sparingly. Legislative repeal is the ordinary remedy to be utilized when an established rule of the common law is found to be undesirable; it is only the exceptional case that permits of the drastic remedy of judicial abrogation of a settled rule of the common law.

L. E. L.

CONSTITUTIONAL LAW — POLICE POWER — RAILROAD PASSES — During the middle and latter half of the nineteenth century, it became a well-known custom for railroads to issue passes to public officials of the state. This was recognized as an evil and was dealt with by statute in many jurisdictions. Pennsylvania, for example, did what would seem to be the natural thing and provided that no railway should grant free passes to any person except officers or

¹³ Cro. Jac. 73, Yelv. 68 f. (Eng. 1606). *Accord*, *Bushland v. Johnson*, 15 C. B. 145 (Eng. 1854); *Brinsmead v. Harrison*, L. R. 7 C. P. 547 (Eng. 1872).

¹⁴ *Blackman v. Simpson*, 58 L. R. A. 410 (Mich. 1899).

¹ Constitution of 1874, Art. 17, Sec. 8.